



DPCC Fact Sheet: Congressional Review Act Challenge to the Fair Pay and Safe Workplaces Rules Would Mean Lower Wages, Worse Conditions for Workers

- *This rule provides a level playing field for workers, and businesses that play by the rules by ensuring that federal contractors pay fair wages and provide safe workplaces.*
- *Without this rule, millions of taxpayer dollars will continue to fund businesses that break the law.*
- *Passing this CRA disapproval resolution could effectively stop any new Department of Labor rules on the disclosure or consideration of labor law violations as a new requirement for federal procurement contracts.*
- *Repealing this order would contradict President Trump's promise to deliver "better wages for Americans."*

The Fair Pay and Safe Workplaces rules are needed to ensure that millions of taxpayer dollars go to businesses that fund good, middle-class jobs that protect workers' health and safety, fair pay, and civil rights. On August 25, 2016, after extensive input from the public, the Department of Labor and the Federal Acquisition Regulatory Council issued the final rules and guidance implementing President Obama's Fair Pay and Safe Workplaces Executive Order which will require prospective federal contractors to disclose labor law violations. This rule will help ensure that federal contracts and the taxpayer dollars that fund them are awarded to responsible employers that comply with workplace safety laws, anti-discrimination laws, sexual harassment laws, and minimum wage and overtime laws. Companies with contracts of more than \$1 million will also no longer be allowed to deny their employees who are the victims of sexual assault, sexual harassment or discrimination their day in court by forcing them to arbitrate these claims if they work for companies with very large federal contracts. [DOL, [accessed 1/17](#)]

One in five Americans are employed by companies that do business with the government, so this rule will make real improvements in the lives of millions of workers. The Labor Department estimates that there are about 24,000 businesses with federal contracts and subcontracts, which employ about 28 million workers. The Center for American Progress estimates more than one in five Americans who are employed by companies that do business with the federal government. The rule will help ensure that these workers are working under current workplace laws, including health and safety standards, wage laws, and civil rights laws that they are entitled to. [CAP, [8/24/16](#), White House Fact Sheet [7/31/14](#)]

Repealing this order would contradict President Trump's promise to deliver "better wages for Americans". A repeal of the Fair Pay and Safe Workplaces Executive Order would effectively help contractors get away with not adequately paying their workers. A 2013 report by the Senate HELP Committee found that government contractors are often the leading violators of workplace laws and that law-breaking companies that do not pay their

employees the wages they are owed or that violate health and safety rules continue to receive government contracts with no strings attached. [Senate HELP Committee, [12/11/13](#); CAP, [8/24/16](#); Time, [9/15/16](#)]

- **Nearly one in three companies with the worst wage and safety violations are federal contractors.** The Senate HELP Committee report reviewed the 200 largest penalties and assessments for violations of wage and hour and safety laws over a 5-year period and found that roughly 30% of the top violators continued to receive federal contracts. A 2010 study from the Government Accountability Office found similar results. [Senate HELP Committee, [12/11/13](#); GAO, [9/10](#)]
- **Between 2007 and 2012, 49 federal contractors responsible for large violations of federal labor laws were forced to pay over \$91 million in back wages.** [Senate HELP Committee, [12/11/13](#)]
- **In FY 2012, of the nearly \$518 billion in federal contracts awarded, \$81 billion was given to contractors with the worst workplace violations.** [Senate HELP Committee, [12/11/13](#); CAP, [8/24/16](#)]

Ensuring that workers receive fair pay and work in safe workplaces is not “blacklisting”. Despite Republican efforts to label the Fair Pay and Safe Workplaces Executive Order as a “blacklisting” rule, the rule does not require a contracting officer to deny any contract based on labor violations history. The rule simply provides information to contracting officers to help them make decisions that are required under current law about whether a contractor is responsible. The goal of the rule is to encourage companies with responsibility problems regarding labor laws to help bring them into compliance—not to debar or blacklist them. [Senate HELP Committee, 1/17; White House Fact Sheet [7/31/14](#)]

- **Current law already requires a company to comply with federal labor laws before they receive a federal contract.** Under the rule, prospective contractors will be required to self-disclose labor law violations from the past three years under 14 federal statutes governing wage and hour, safety and health, collective bargaining, veterans disability, and civil rights protections. The information will be self-reported by prospective contractors. If the prospective contractor does not have any violations, they simply check a box. [Senate HELP Committee, 1/17]
- **The vast majority of contractors adhere to labor laws and will not be affected.** Taxpayers should not be rewarding corporations that cut corners by breaking the law and denying workers the pay and rights they deserve. For the minority of contractors that have these types of violations, the expectation is that, in most cases, they will be able to address the issues raised by their violations. [Senate HELP Committee, 1/17; White House Fact Sheet [7/31/14](#)]

The rule does not impose any new compliance obligations on government contractors, including small businesses. The obligation to comply with basic workplace protection laws is long-standing federal law that applies to all employers, including government contractors. This rule simply requires contractors to share information about their history of compliance before being awarded a federal contract. The Labor Compliance Advisors are specifically charged with assisting the contracting community with compliance and the Department of Labor has several compliance assistance programs that specifically help small businesses. [OMB, 2/25/15]

Too many of the businesses that receive millions of dollars in taxpayer funded contracts break the law by denying fair wages and safe workplaces to their employees. While the vast majority of federal contractors play by the rules, tens of thousands of American workers are unlawfully denied overtime wages, discriminated against in hiring or pay, or are denied basic safety and workplace protections by federal contractors who receive federal funding. [DOL, [accessed 1/17](#); NWLC, [8/24/16](#)]

Despite poor performance, some of the worst violators continue to receive contracts, wasting taxpayer dollars. A 2013 CAP Action report found that contracting with companies that had egregious records of workplace violations also resulted in poor contract performance. From FY 2005 to FY 2009, 25% of the companies that committed the top workplace violations and later received federal contracts had significant performance problems. [CAP, [8/24/16](#)]

- In August 2016, the Department of Labor fined a Tyson Foods poultry plant in Texas \$263,000 for 15 serious and two repeat labor violations, one of the highest fines levied by OSHA in 2016. The six month investigation followed the second disfiguring amputation in the plant. Tyson Foods received more than 160 federal contracts over three and a half years, totaling more than \$147 million dollars. With the new rules, Tyson's safety violations will now be subject to review by federal contracting officers before any new contracts are issued. [NELP, [8/24/16](#)]

This rule helps businesses that play by the rules. Continuing to provide taxpayer dollars to support businesses that repeatedly, willfully or pervasively break the law and cheat their workers disadvantages the vast majority of contractors who play by the rules. By implementing these reforms, the government will help raise the standards for workers, provide better value to taxpayers, and ensure that law-abiding companies are able to compete on an even playing field. [CAP, [8/24/16](#)]

- After Maryland implemented a contractor living wage standard, the average number of bids for state contracts increased by nearly 30% and nearly half of contractors interviewed by the state government said that the new standards encouraged them to bid because it leveled the playing field. [CAP, [8/24/16](#)]

The CRA could stop agencies from doing their jobs. Under the CRA, an agency cannot issue any future regulations “substantially the same” as the repealed regulation unless Congress passes a new law. This could effectively tie the hands of the Department of Labor in any matters relating to the regulation of payment transparency. [[5 U.S.C. § 801](#)]

- **An analysis in the Washington Law Review argues that it is “conceivable that any subsequent attempt to regulate in any way whatsoever in the same broad topical area would be barred” under a key clause in the CRA, which bars an agency from issuing a new rule that is “substantially the same” language.** [Washington College of Law, [2011](#)]
- **The “substantially similar” language is vague and undefined, and a violation “may be a matter for Congress alone to decide.”** Because the CRA prohibits judicial review, Congress could be the only ones with authority to make the distinction. [CRS, [11/17/16](#)]